

Preemption of State Standards for Ballasts, Lamps, and Luminaires

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I. Introduction and Summary

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Efficiency standards for four previously-unregulated appliance types are proposed in the current Energy Commission appliance rulemaking:

Under-Cabinet Fluorescent Lamp Ballasts (section 1605.3(n)(3))
General Service Incandescent Lamps (section 1605.3(k)(2))
Incandescent Reflector Lamps (section 1605.3(k)(3))
Luminaires Designed for Metal Halide Lamps (section 1605.3(n)(2))

Questions have arisen about whether any of the proposed standards are preempted by federal law. This memo concludes that none are preempted, for several somewhat overlapping reasons:

(1) *The standards for general service incandescent lamps, incandescent reflector lamps, and metal halide luminaires:* The California regulations of the affected appliances make clear that these appliances are different from the types that are federal "covered products" or "covered equipment"; therefore, all are outside the scope of federal preemption.

(2) *The standards for under-cabinet ballasts, general service incandescent lamps, and incandescent reflector lamps:* The general rule is that a state efficiency standard is preempted if it applies to any type of a federally-regulated "covered product" or "covered equipment" for which there is a federal efficiency standard applicable to the covered product or equipment, even if the state standard applies to a type of the appliance that is different from the types to which the federal standard applies. However, for fluorescent lamp ballasts and fluorescent and incandescent lamps, the preemption rules are different: a state standard is preempted only if there is a federal efficiency standard applicable to the particular type of ballast or lamp regulated by the state standard. Because the federal efficiency standards for ballasts and lamps are for different types than the types regulated by the proposed California standards, the latter are not preempted.

(3) *The standards for metal halide luminaires:* The proposed California standards regulate luminaires, not lamps; therefore, even if metal halide lamps were a “covered product” or “covered equipment,” luminaires for such lamps would still not be a “covered product” or “covered equipment,” so state standards applicable to such appliances would not be preempted.

Please note that this memo applies only to state *efficiency standards*. It does not apply to state regulations on appliance testing, labeling, or data-submittal, for which the preemption rules are different.

II. Discussion

A. The Federal Statutes’ Definitions of “Covered Products” and “Covered Equipment”

Federal preemption applies only to the appliances that are within the scope of the federal appliance statutes: that is, only to residential-type “covered products” and commercial- and industrial-type “covered equipment.” (See 42 U.S.C. §§ 6297(b)-(c), 6316 (a)-(b).) The National Appliance Energy Conservation Act (“NAECA”) applies to “covered products,” and the Energy Policy Act of 1992 (“EPA Act”) applies to “covered equipment.” If an appliance is not a “covered product” or “covered equipment,” state efficiency standards for the appliance are not preempted.

1. Incandescent Lamps

Federal law includes “incandescent reflector lamps” within the scope of “covered products.” (42 U.S.C. § 6292(a)(13)-(14).) That term (along with the terms “fluorescent lamp ballasts” and “general service fluorescent lamps”) is defined by very complex provisions. (See *id.* §§ 6291(29)(A) & (D), 6291(30)(A), (C)-(F).)

In the proposed California regulations, the definitions of “General Service Incandescent Lamps” and “Incandescent Reflector Lamps” are drawn so that they are outside the definition of the federally-covered “incandescent reflector lamps.” “General Service Incandescent Lamps” are not reflector lamps at all, so they are not a federally-covered product, and the “Incandescent Reflector Lamps” that are within the scope of the California regulations are different types than the ones

defined as federally-covered products. (Compare 42 U.S.C. §§ 6291(30)(C)-(D) & (F) with Proposed Regulations, §§ 1602(k), 1605.1(k)(2)-(3), 1605.3(k).)

2. Metal Halide Lamps

EPAct does not have any provisions that directly define any type of lamp, ballast, or luminaire as “covered equipment.” EPAct *allows* DOE to define commercial and industrial “electric lights” as a type of “covered equipment” (42 U.S.C. §§ 6311(1)(G), 6311(2)(B)(v), 6312(b)), but to date DOE has not done so. DOE’s lack of action indicates that metal halide lamps are not “covered equipment.”

However, section 6317 of EPAct contains provisions that describe the deadlines for and effective dates of federal regulations, including testing, labeling, and efficiency standards, for “high-intensity discharge lamps” (and distribution transformers and small electric motors). (*Id.* § 6317.) (Metal halide lamps are a type of high-density discharge lamps.) One might argue from this that high-intensity discharge lamps are “covered equipment,” but the preemption implications of that argument are such that the better view is that such lamps are not “covered equipment.” The next paragraph explains why.

NAECA and EPAct not only preempt state standards when a federal standard takes effect, but they also preempted some standards before federal standards became effective. (42 U.S.C. §§ 6297(b), 6316(a).) However, preemption of state standards before federal standards took effect generally applied only to state standards enacted after the enactment date of the federal statutes (or in some cases, at later specified dates), and the prospect of federal preemption was made quite express in the statutes. (See *id.* § 6297(b)(1) & (6); see also *id.* § 6297(c)(4) & (5).) That approach allowed the states time to adopt their own standards while the federal statutes were being considered by Congress, so that states wanting their own standards before the federal standards took effect had an opportunity put them in place. In addition, such preemption occurred only where there were federal standards enacted in the statute (see *id.* § 6297(b)-(c)), which indicates that Congress wanted to be sure that either the states or the federal government would be regulating appliance efficiency. In contrast, in the case of high-intensity discharge lamps, there was no warning given to states in EPAct that preemption regarding such products might occur, nor were there any federal standards enacted. Therefore, to conclude that “high-intensity discharge lamps” are covered products, which would apparently mean that state standards for such appliances are preempted right now, would be counter to the approach taken by

Congress in enacting both NAECA and EPCA. (That approach to preemption before federal standards take effect – give the states fair warning, and preempt only where federal standards are enacted in a statute – have been preserved, for the most part, in the various federal energy bills introduced in Congress in recent years.)

To summarize this discussion of the definitions of “covered products” and “covered equipment”: in the California regulations, the definitions of “General Service Incandescent Lamps” and “Incandescent Reflector Lamps” take those appliances outside of the scope of federal “covered products”; therefore, the proposed California standards for those appliances are not preempted. Similarly, high-intensity discharge lamps are not federal “covered equipment,” so the proposed California standards for Luminaires Designed for Metal Halide Lamps are also not preempted.

B. Federal Preemption of State Standards

1. Fluorescent Lamp Ballasts, Fluorescent Lamps, and Incandescent Lamps

For most covered products and covered equipment, state standards for any type or class are preempted upon the effective date of a federal standard for that product. (42 U.S.C. § 6297(c).) Preemption applies even if a state standard is for a particular type or class of appliance within the covered product or equipment, and the federal standard for the covered product or equipment does not include the particular type or class:

[O]n the effective date of an energy conservation standard established in or prescribed under [NAECA] *for any covered product*, no State regulation concerning the energy efficiency, energy use or water use *of such covered product* shall be effective with respect to such product

....

(42 U.S.C. § 6297(c) (emphasis added).) However, the preemption rules for fluorescent lamp ballasts, fluorescent lamps, and incandescent lamps are different. Federal law expressly exempts from preemption those state standards for types or classes to which a federal standard is not applicable, even if the state standard and a federal standard are applicable to the same general covered product:

[O]n the effective date of an energy conservation standard established in or prescribed under [NAECA] for any covered product, no State

regulation concerning the energy efficiency, energy use or water use of such covered product shall be effective with respect to such product [¶] . . . except that a State regulation . . . regulating *fluorescent lamp ballasts other than those to which* [the NAECA standard] *is applicable* shall be effective . . . until the effective date of a standard that is prescribed by [DOE] and *is applicable to such ballasts* [and] except that a State regulation . . . regulating *fluorescent or incandescent lamps other than those for which* [the NAECA standard] *is applicable* shall be effective . . . until the effective date of a standard that is prescribed by [DOE] and *is applicable to such lamps*.

(42 U.S.C. § 6297(c) & (c)(1) (emphasis added); see also *id.* §§ 6297(b)(1) & (b)(4) (preempting certain state standards before a federal standard takes effect, but exempting the same state ballast and lamp standards exempted by § 6297(c)(1)), 6316(a) & (b) (applying NAECA's preemption rules under § 6297 to any appliance that is mentioned within EPCA, except certain HVAC appliances).)

Because of the special exemption for state ballast and lamp standards, the proposed California standards for Under-Cabinet Fluorescent Lamp Ballasts, General Service Incandescent Lamps, and Incandescent Reflector Lamps are not preempted. Either by their own terms, or in conjunction with the definitions in the proposed regulations, the proposed standards apply to types of appliances that are not covered by the federal ballast or lamp standards. With regard to the proposed standards for Under-Cabinet Fluorescent Lamp Ballasts, those standards apply only to ballasts equipped with T8 fluorescent lamps (Proposed Regulations, § 1605.3(n)(3)), while the federal standards apply only to ballasts designed for T12 fluorescent lamps (10 C.F.R. § 430.32(m)(1)(ii)(C) (2004)). With regard to the proposed standards for General Service Incandescent Lamps and Incandescent Reflector Lamps, as this memo discusses at page 3 above, the definitions in the proposed regulations exclude from the scope of the California standards any appliance that is within the scope of the applicable federal standard.

2. Metal Halide Lamps and Luminaires

As noted at page 3 above, although EPCA discusses high-intensity discharge lamps, such lamps should not be considered "covered equipment" under federal law. Moreover, even if high-intensity discharge *lamps* (including metal halide lamps) were "covered equipment, state standards on *luminaires* – the appliance to which the proposed California standards on Luminaires Designed for Metal Halide Lamps apply – would not be preempted. (DOE's current consideration of high-

intensity discharge lamps makes clear that DOE is considering standards for lamps only, not for luminaires. (See DOE, Draft Framework for Determination Analysis of Energy Conservation Standards for HID Lamps, p. 76 (2003).))

The proposed California standards contain a requirement for lamp/ballast efficacy (Proposed Regulations, § 1605.3(n)(2), Table N-1), which might lead to a conclusion that the lamps within the luminaires are being regulated and that the requirement could be preempted. Not so. Even if metal halide lamps were “covered equipment” under federal law, state efficiency standards would be preempted only if they establish a minimum energy efficiency (or maximum energy consumption) for the lamp, or set a design requirement for the lamp. (42 U.S.C. §§ 6291(6), 6311(18), 6297(b) & (c).) According to the Commission’s technical staff, the practical effect of the lamp/ballast efficacy requirement is to require electronic ballasts, but it has nothing to do with the lamps the lamps themselves. (No lamp will meet the efficacy requirement without an electronic ballast, and all lamps will meet the requirement with an electronic ballast.) Similarly, the provisions in the proposed standards that disallow probe-start ballasts have nothing to do with the lamp itself.

3. NEMA’s Letter on Preemption

In a May 26, 2004 letter, the National Electrical Manufacturers Association (“NEMA”) asserts that federal law preempts the proposed standards on General Service Incandescent Lamps and Incandescent Reflector Lamps. (The letter also opposes the proposed standards on Under-Cabinet Fluorescent Lamp Ballasts and on Luminaires Designed for Metal Halide Lamps, for non-preemption reasons.) To support its argument NEMA cites various provisions of the federal statutes and the trial court’s ruling in the ongoing litigation by filed ARI et al. against the Commission. NEMA’s letter (1) ignores both (a) the exclusion of certain types of ballasts and lamps from the federal definitions of “covered products” and “covered equipment,” and (b) the special provisions on preemption of state ballast and lamp standards; and (2) fails to understand that the trial court’s ruling dealt with the preemption rules for state regulations on testing and labeling, which are different from the preemption rules for state efficiency standards. (Moreover, the Commission has appealed the trial court’s ruling.) I conclude that NEMA’s preemption arguments have no merit.